IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIFTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No. 2530 of 2005

Between:

M/s Heaven Bombay Dying Showroom, 16-11-740/10,

Dilshuknagar, Hyderabad, Rep. by its Proprietor

Sri T. Anand Krishna Rao S/o T.V. Krishna Rao,

aged 49 years R/o Dilshuknagar, Hyderabad.

..... PETITIONER

AND

1 The Municipal Corporation of Hyderabad,

rep. by its Commissioner, Tankbund Road, Hyderabad.
2 The Addl. Commissioner (Finance), Advertisement Section,

M.C.H. Tankbund Road, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents in treating the name Board/board frames filed by the Petitioner on the parapet wall of its business place are as covered by section 420 and 421 of H.M.C. Act, and consequently demanding the fee vide proceedings No. 17/AEE/Advt./MCH/2004-2005 dated 27-1-2005 for the same is illegal, arbitrary, capricious and in violation of the principles of natural justice and to pass such other order or orders as this Hon'ble Court deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.P.SRIHARI

Counsel for the Respondent Nos.1 and 2: MR.RAMA RAO GHANTA

The Court at the stage of admission made the following:

ORDER:

Aggrieved by notice under Sec.421 r/w. Sec.622 of Hyderabad Municipal Corporation Act, 1955 (for short 'the Act'), issued to the petitioner that the name board fixed to its premises is an advertisement and that it has to pay Rs.14,300/- as advertisement fees, this writ petition is filed questioning the said notice.

The contention of the learned counsel for the petitioner is that since the board which is fixed to the business premises of the petitioner is not an advertisement within the meaning of Sec.421 of the Act as it not comes within the proviso to Sec.421 of the Act, and in view of the ratio in ***Ratiloku Shetty vs. Municipal Corporation of Greater Mumbai***, the impugned notice is liable to be quashed. The contention of the learned standing counsel for the respondents is that since the board in question is an illuminating board and since as per proviso to Sec.421 (1) of the Act, illuminating advertisements also would come under an 'advertisement' and since the question as to whether the sign board is an advertisement within the meaning of the Act or not has to be considered, decided by the commissioner the impugned notice may be treated as a show cause notice and the petitioner may be given opportunity to send reply thereto and the 1st respondent would consider the said representation and pass appropriate orders.

Since the question as to where the sign board is fixed and whether it is illuminated or not, are questions of fact. Therefore impugned notice dated 27.01.2005 can be treated as a show cause notice as to why the amount demanded there under should not be recovered. Petitioner shall submit reply to the notice putting forth all his contentions within three weeks from today. After considering the reply submitted by the petitioner, the respondents shall dispose of the case on merits, after giving an

opportunity of being heard to the petitioner and pass appropriate orders thereon, keeping in view the ratio in ***Ratiloku Shetty vs. Municipal Corporation of Greater Mumbai***, relied on by the petitioner as expeditiously as possible, at any rate within two months after the petitioner submits his reply. Depending on the result of the decision taken by the respondents, petitioner can seek his remedies afresh. Till the respondents take a decision on the impugned notice and communicate the same to the petitioner by registered post acknowledgment due, there shall be stay of collection of the amount covered by the impugned notice.

This Writ Petition is, accordingly, disposed of. No order as to costs.

Dated: 15.02.2005

Dsr

ASSISTANT REGISTRAR

To:

1. The Commissioner,

Municipal Corporation of Hyderabad,

Tankbund Road, Hyderabad

2. The Addl.Commissioner(Finance)

Advertisement Section,

Municipal Corporation of Hyderabad,

Tankbund Road, Hyderabad

3. Two CD copies

*Form-NIC-OGS/WP{**AVLR**}*